

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular: Update on ESMA Statement on the preparatory work of ESMA in relation to Contracts for Difference [CFDs], including rolling spot forex, Binary options and other speculative products

Background

Reference is made to the [June 2017 ESMA Statement](#) in relation to the preparatory work on Contracts for Difference [CFDs], Binary Options and Other Speculative Products.

ESMA has been concerned about the provision of the mentioned speculative products to retail investors for a considerable period of time and to this effect, has conducted ongoing monitoring and supervisory convergence work in this area, such as:

- i.* the publication of a number of Q&As on CFDs and other speculative products;
- ii.* the establishment of a CFD Task Force in July 2015; and
- iii.* the issue of investor warnings on the sale of the mentioned speculative products in July 2016.

Irrespective of the above measures, ESMA remains concerned that the above referred supervisory convergence tools may not be sufficiently effective to ensure that the risks to consumer protection are sufficiently controlled or reduced. As a result, in the referred [June 2017 ESMA Statement](#), ESMA disclosed that it was in the process of discussing the possible use of product intervention powers under Article 40 of MiFIR.

In fact, ESMA had disclosed that these measures include leverage limits, guaranteed limits on client losses, and/or restrictions on the marketing and distribution of these products.

By way of a follow-up to the [June 2017 ESMA Statement](#), ESMA has now issued a [Revised Statement](#), providing additional and more precise details on ESMA's potential course of action.

In particular, ESMA is considering measures to:

- I. prohibit the marketing, distribution or sale to retail clients of **binary options**; and
- II. restrict the marketing, distribution or sale to retail clients of **CFDs, including rolling spot forex**.

The restrictions on CFDs currently under review are:

- leverage limits on the opening of a position between 30:1 and 5:1, whose limit will vary according to the volatility of the underlying asset;
- a margin close-out rule;
- negative balance protection to provide a guaranteed limit on client losses;
- a restriction on benefits incentivising trading; and
- a standardised risk warning.

Target Audience

This circular is aimed at investment firms distributing Contract for Difference [CFDs]; Rolling Spot Forex; Binary Options and/or other speculative products under the MiFID regime.

Next Steps

ESMA will conduct a brief public consultation in early January 2018 on this matter.

Industry participants should note that any product intervention measure adopted by ESMA under Article 40 of MiFIR can have an initial duration of up to three months and is renewable. **It is important to note that ESMA product intervention measures are legally binding in all Member States.**

MFSA is currently in the process of assessing whether existing national measures implemented in relation to speculative products i.e. the [Online Forex Policy](#) must be amended in order to ensure compliance with ESMA's product intervention measures.

To this effect, MFSA will be communicating further details in the near future.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact: csu@mfsa.com.mt.

You may also wish to contact the following contact persons: Dr Sarah Pulis, Senior Manager, Conduct Supervisory Unit – 2548 5232 and/or Ms Sara Antonia Magri, Analyst, Conduct Supervisory Unit, - 2548 5250.

Communications Unit
Malta Financial Services Authority
18th December 2017